

**UNAPPROVED MEETING MINUTES  
CITY OF MILPITAS**

<b>Minutes:</b>	<b>Regular Meeting of Milpitas City Council</b>
<b>Date of Meeting:</b>	<b>Tuesday, July 5, 2005</b>
<b>Time of Meeting:</b>	<b>6:00 p.m. (Closed Session) 7:00 p.m. (Public Business)</b>
<b>Place of Meeting:</b>	<b>City Hall Council Chambers, 455 E. Calaveras Blvd.</b>

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**ROLL CALL**

Mayor Esteves called the meeting to order at 6:02 PM.

Mayor Esteves, Vice Mayor Gomez and Councilmembers Giordano, Livengood and Polanski were all present.

**CLOSED SESSION**

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda:

**(1) CONFERENCE WITH LABOR NEGOTIATORS – COLLECTIVE BARGAINING**

City's Negotiators: Art Hartinger, Carmen Valdez, Ed Kreisberg

Anticipated issues under negotiation: Wages, Hours, Benefits, Working Conditions

Pursuant to CA Govt. Code §54957.7. Organizations representing:

Milpitas Police Officers Association

International Association of Firefighters

PROTECH

Milpitas Supervisors Association

Milpitas Employees Association

**(2) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Subdivision (a) of CA Government Code §54956.9 City of Milpitas vs. Turner Construction et al., Santa Clara County Superior Court Case No. 103CV814946 consolidated with Case No. 103CV008400

**(3) CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION**

Initiation of litigation pursuant to subdivision (c) CA Government Code §54956.9. One case, City as Plaintiff

City Attorney Steve Mattas recommended the City Council adopt a motion to add the following item to the Closed Session agenda:

**(4) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION** pursuant to CA Government Code §54956.9(a) Milpitas Redevelopment Agency v. Winsor et al. Santa Clara County Superior Court Case No. 105CV043954

Motion/Second: Vice Mayor Gomez / Councilmember Polanski

Motion carried unanimously by a vote of:

AYES: 5

NOES: 0

The City Council reconvened in Open Session at 7:04 PM with Mayor Esteves presiding and all Councilmembers present.

**CLOSED SESSION  
ANNOUNCEMENTS**

City Attorney Steve Mattas announced that the City Council voted unanimously to authorize the City Attorney to pursue the mitigation desired by the City of Milpitas, and, as necessary, to file a

challenge to the recent decision of the City of San Jose to certify the Final Environmental Impact Report and approve the North San Jose Development Project.

On other matters, direction was given to staff and no final action taken.

## **PLEDGE**

Boy Scout Troop No. 92 led the Pledge of Allegiance.

## **MINUTES**

MOTION: to approve the meeting minutes of the City Council meeting of June 21, 2005, as submitted.

Motion/Second: Councilmember Giordano / Councilmember Polanski

Approved unanimously by a vote of: AYES: 5  
NOES: 0

## **SCHEDULE OF MEETINGS**

MOTION: to approve the Schedule of Meetings

Councilmember Polanski announced that the Citizens Advisory Commission meeting was canceled for July 6. Also, she reminded the public that there would be no City Council meeting on July 19.

Motion/Second: Councilmember Livengood/ Councilmember Giordano

Approved unanimously by a vote of: AYES: 5  
NOES: 0

## **PRESENTATIONS**

### **Presentation**

A gift set of books for the Milpitas Library from former President of the Philippines Fidel Ramos was presented by Mr. Ramos during his recent visit to Milpitas City Hall on June 22.

Mayor Esteves announced the special visit from the former President, and read a letter from Filipino Consulate in San Francisco. The Mayor thanked Mr. Ramos for his visit and for his generous gift.

### **Proclamation**

Mayor Esteves proclaimed the month of July 2005 as "Parks and Recreation Month." He also presented a plaque to Mr. Bob McGuire. The Mayor highlighted Mr. McGuire's long service to the City in Parks and Recreation, and for this he had been awarded the "Distinguished Professional Award" from the California Parks & Recreation Society's District IV -- its highest honor. Mr. McGuire expressed that it's a delight working with our City Council.

### **Certificate of Appointment**

The Mayor presented Mr. William Nolan, Citizens Emergency Preparedness Advisory Commission, Alternate No. 2, with his certificate.

### **Commendation**

Diane McDonough, former member of the Economic Development Commission, recently stepped down from the Commission and was recognized for her contribution to the community. Mayor Esteves presented her with a Certificate of Appreciation. She was the "Business Person of the Year" recently, was the first Chair of Economic Development Commission, and past President of the Milpitas Chamber of Commerce. Mayor Esteves thanked Ms. McDonough for her hard work and dedication.

## **CITIZENS FORUM**

**Mark Amador**, Milpitas resident and Milpitas South Little League representative, announced that our City was chosen for district championships to be held here in one of the Divisions. Milpitas was selected to host the tournament locally, this summer between July 28 – August 2. All residents were encouraged to attend and watch the youth baseball games.

**Two young women representing Sunnyhills Youth Association**, announced "Become an Artist Day" scheduled the following Saturday, July 9 at Sunnyhills Methodist Church parking lot, 355 Dixon Road. It was a free event, open to all residents, and it was held for the last 5 years.

**Ron Henning**, Milpitas resident, spoke regarding the use of eminent domain on the Winsor Property. He believed the City Council said at its first meeting they would not use eminent domain, but now it was proceeding. He strongly encouraged more use of the railroad in the South Bay, rather than the planned expansion of BART.

**Jay Peeples**, Assistant Editor of the *Milpitas Post*, announced that his last day working for the newspaper would be July 12, after seven years reporting in his hometown. He was grateful for the experience, gave thanks to the City employees, complimented the diligent staff of the Post, and he thanked residents of Milpitas and the elected City Council for their interest in community affairs.

## **ANNOUNCEMENTS**

**Councilmember Polanski** first wished Jay Peeples a lot of luck, and said his parents should be proud. She announced the annual "Neighborhood Night Out" on Thursday, August 4<sup>th</sup>. Lastly, she thanked everyone who participated in the July 4<sup>th</sup> parade the previous day.

**Councilmember Livengood** expressed that he'd worked with many reporters over the years, and that elected officials ask mostly that reporters "get it right." In news that Jay Peeples reported, Mr. Livengood was pleased that he was never misquoted, Jay did a fantastic job, and he appreciated the accuracy about reporting on City Council meetings.

**Mayor Esteves** thanked former Fire Chief Bill Weisgerber on the "Relay for Life" event, along with donors, volunteers, and sponsors in the event held for the awareness of fight against cancer. Mayor offered his congratulations to Don Peoples, the Milpitas Chamber of Commerce's "Business Person of the Year." For the July 4<sup>th</sup> activities, he thanked City staff for working hard on the parade, swim party, and fireworks. Lastly, he thanked Jay Peeples, for his service to the newspaper and to the City.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST**

Item #15 (re: Cardoza Park) Mayor Esteves may have a conflict and would abstain from voting.  
Item # 23 (re: work on Terra Bella Dr) Mayor Esteves may have a conflict and would abstain from voting.

## **APPROVAL OF AGENDA**

City Manager Charles Lawson requested removal of items No. 15 and No 31 upon request of staff.

City Attorney Steve Mattas said on item #22 (re: contract with City Attorney law firm), he requested removal of the contract amendment to the Meyers, Nave legal services contract with the City (#1) and leave the Purchase Order (#2) on the consent calendar.

**MOTION:** to approve the agenda as amended.

**Motion/Second:** Councilmember Livengood / Councilmember Giordano

Approved unanimously by a vote of:

**AYES:** 5

**NOES:** 0

## **CONSENT CALENDAR**

Councilmember Livengood requested removal of Item #12 (re: Comcast), for discussion.

Mayor Esteves asked about Item #5, whether there were any financial documents that Terrace Gardens must submit to the City. City Attorney Mattas responded that yes, the annual financial review was the required report, and it was on the consent calendar.

**MOTION:** to approve the Consent Calendar, as amended.

**Motion/Second:** Councilmember Livengood / Councilmember Polanski

Approved unanimously by a vote of:

**AYES:** 5

**NOES:** 0

Later in the meeting, after the vote above was recorded, Vice Mayor Gomez announced he needed to abstain on Item #23, due to the location near his property. City Attorney Mattas then provided advice on the correct course of action to rescind the earlier vote, and to entertain a new motion noting the comment provided by the Vice Mayor.

MOTION: To rescind the earlier vote approving the Consent Calendar.

Motion/Second: Councilmember Giordano/ Councilmember Livengood

Approved unanimously by a vote of: AYES: 5  
NOES: 0

MOTION: To approve the Consent Calendar, as amended including the abstention by the Vice Mayor on Item #23.

Motion/Second: Councilmember Livengood / Councilmember Giordano

Approved unanimously by a vote of: AYES: 5  
NOES: 0

#### **Consent Calendar Items:**

**\* 4. Receive Odor Control Comprehensive Action Plan Update**

City staff reported that odor complaint information from the Bay Area Air Quality Management District (BAAQMD) has not been consistent and timely since April, due to problems with the Rapid Notification e-mail system. BAAQMD staff has recently informed us that the notification system has been back on line as of the week of June 6. Complaint levels appear comparable with the number of complaints the same time last year. Staff will be distributing odor outreach information as a combined odor and street sweeping door hanger to residents in July. The Bay Area Air Quality Management District has reported a number of complaints.

**\* 5. Review Terrace Gardens, Inc. Annual Financial Report:**

Councilmember Giordano referred the Annual Financial Report for Terrace Gardens, Inc., to City Council for review. It covered calendar years 2003 and 2004. The independent auditor's report concluded that the financial statements fairly present the financial position of Terrace Gardens, Inc. and is in conformity with generally accepted accounting principles. A copy of the report was included as an attachment to the Council agenda.

**\*7. Approve Amendment to the Senior Nutrition Contract with Compass Group USA Inc.**

Approved the First Amendment to the Senior Nutrition Contract with Compass Group USA, Inc. (Bateman Division) and the City of Milpitas, and Authorized Payment with costs totaling \$41,400. Bateman agreed to provide meals at \$3.68 each.

**\*8. Re-appoint Council Representative To Bay Area Water Supply And Conservation Agency**

Re-appointed Councilmember Robert Livengood as the representative to the Bay Area Water Supply and Conservation Agency, to a four-year term. BAWSCA, authorized by Assembly Bill 2058, plans and acquires supplemental water supplies, encourages conservation and regional recycled water use and plans/finances new facilities for collection and transmission of water.

**(12. Adopt Ordinance 139.3 Granting Cable TV Franchise)**

This item was removed from the Consent Calendar. Discussion and vote noted below.

**\*13. National Night Out**

Adopted Resolution No. 7541 Setting August 4, 2005 as Milpitas "National Night Out" for 2005. The Community Advisory Commission recommended Thursday, August 4, 2005, as the date to celebrate National Night Out in Milpitas.

**\* 14. Grant Acceptance for Water System Air Relief Valve modifications**

Adopted Resolution No. 7542 granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to \$15,461.50.

The City Council awarded the project to West Valley Construction on September 21, 2004. The project has been successfully completed. Therefore, initial acceptance was

granted and the contractor's faithful performance bond was reduced to 10% of the contract amount (\$15,461.50).

**(15. Approving an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for Milpitas Sports Center and Cardoza Park Improvement )**

Item removed from the Agenda (postponed to August 2)

**\* 17. Award Bid for Janitorial Services**

Awarded bid for Janitorial Service to Empire Maintenance in the amount of \$178,707.60; and, authorized the City Manager to execute the contract, subject to approval as to form by the City Attorney.

Staff sent a Request for Proposal (RFP) to thirty-five vendors on Purchasing's vendor list for janitorial service for the City Hall Complex, the Sports Center, the Main Fire Station, and two Police Substations at the Mall. The bid was for a three-year term, with two one-year options based on performance.

**\* 18. Agreement Amendment: Montague Widening Project, Consultant HMM Engineers**

Authorized City Manager to Execute an Agreement Amendment for the Montague Widening Project, Consultant: HMM Engineers, Project No. 4179, to perform additional services to complete and package an additional bid set of plans and specifications for Phase II of the widening project, in the amount of \$125,100.

**\* 19. Authorize the City Manager to Execute Debris Box Agreement with Valley Recycling**

Authorized City Manager to execute Debris Box Agreement with Valley Recycling, authorizing the hauler to engage in the business of collecting and disposing of non-organic solid waste and/or construction and demolition debris produced, kept or accumulated within the city limits of Milpitas.

**\* 20. Authorize City Manager to Execute Agreement with SCS Engineers, North Main Street Development EIR Mitigation**

Authorized City Manager to execute a design services agreement with SCS Engineers for the North Main Street Development EIR Mitigation, Project No. 8172.

**\* 21. Approve Renewal Of Annual Software Support And Maintenance Fees with Vendors through June 30, 2006.**

Authorized City Manager to approve the payment of the annual software support and maintenance fees through June 30, 2006 to:

1. American Management Systems Inc. for the City's Budget System in the amount of \$6,250.53
2. HDL Software, LLC for the City's Business License System in the amount of \$6,800.00
3. Intergraph Corporation for the City's GIS system in the amount of \$12640.02 and
4. KIS Computer Center for Cisco Equipment Support in the amount of \$2,509.78.

There were sufficient funds in the Information Services Operating budget for this request

**\*22. Approve Contract Amendment With Meyers Nave And Authorize Use Of \$68,000 Of Existing Meyers Nave Purchase Order No. 3482, Line 2 For General Legal And Personnel Services**

City Council was to consider the following two actions:

- (1) Approve Amendment No. 5 to the existing contract between Meyers Nave and the City of Milpitas for legal services, and ;
- (2) Authorized the use of \$68,000 of existing Meyers, Nave Purchase Order No. 3482, Line 2, for general legal and personnel services.

Per the announcement earlier by the City Attorney, only the second item was approved by motion of the City Council. The contract amendment was removed from the agenda and not voted upon.

**\*23. Approve Plans and Specifications and Authorize**

Approved the plans and specifications, and authorized the advertisement for bid proposals for Project No. 6073.

**Advertisement for Bid  
Proposals: Sewer Deficiency  
Program, Project No. 6073,  
Raines, Melton & Carella, Inc.**

This motion was approved by a vote of:

AYES: 3  
NOES: 0  
ABSTAIN: 2 (Esteves, Gomez)

**\*24. Approve Plans and  
Specifications and Authorize  
the Advertisement for Bid  
Proposals: Hetch Hetchy  
Right of Way Landscape  
Improvements, Project 5053**

Approved the plans and specifications, and authorized the advertising for bid proposals, for Project No. 5053.

**\*25. Approve Plans and  
Specifications and Authorize  
the Advertisement for Bids:  
Storm Water Pump Station  
Improvements, Project No.  
8106**

Approved the plans and specifications, and authorized the advertising for bid proposals for Project No. 8106.

**\*26. Authorize City Manager  
To Execute Cost Sharing  
Agreement With Santa Clara  
County; Montague  
Expressway Between Great  
Mall Parkway And I-680,  
Project No. 4179**

Authorized the City Manager to execute a cost sharing agreement with the County of Santa Clara, in the amount of \$354,000, subject to approval as to form by the City Attorney, for Project No. 4179.

**\*27. Authorize the City  
Manager to Execute  
Agreement: Winzler & Kelly  
Consulting Engineers, Main  
Sewer Pump Station  
Improvements-Project No.6103**

Authorized the City Manager to execute the agreement with Winzler & Kelly Consulting Engineers, for an amount not to exceed \$768,000 for the engineering design of a new sewer pump station, Project No. 6103 subject to approval as to form by the City Attorney.

**\*28. Authorize City Manager  
to Execute Agreement;  
Advanced Engineering Design;  
Calaveras Blvd O/C Sidewalk;  
Project No. 4202**

Authorized the City Manager to execute an Agreement with Advanced Engineering Design for an amount of \$44,500, for Project No. 4202 for widening the existing sidewalk on Calaveras Blvd. overcrossing, subject to approval as to form, by the City Attorney.

**\*29. Award Contract:  
Summers & Sons Electric Inc.  
For Electrical Work At Main  
Sewage Pump Station, Project  
Nos. 6079 and 8154**

Awarded contract for electrical upgrades, mainly including new light fixtures, at the Main Sewage Pump Station to Summers & Sons Electric Inc. in the amount of \$39,500, for Projects No. 6079 and 8154.

**\*30. Award Construction  
Contract to Western Roofing  
Service and Approve Budget  
Appropriation: Interim Senior  
Center Re-Roofing Project No.  
8135**

Awarded a contract to Western Roofing Service for the amount of \$78,175; and , approved a Budget Appropriation in the amount of \$30,000 from the CDBG into CIP Project 8135, for a new roof at the Sal Cracolice facility.

**( 31. Reject Bid Protest and  
Award Construction Contract:  
2005 Annual Slurry Seal,  
Project No. 4223, and 2006  
Annual Street Resurfacing,  
Project No. 4229)**

This item was removed from the agenda (postponed to August 2).

**\*32. Approve Payment  
Requests to specified Vendors /  
Contractors**

Approved Payment Requests to the following two Vendors / Contractors:  
1) \$10,450 to Konica Minolta Business Machines for annual maintenance and support for three shared high-speed 7065 copiers at City Hall; and,  
2) \$33,600 to the Bay Area Air Quality Management District (BAAQMD) for 40 diesel engine permits.

**PUBLIC HEARINGS**

**1. Approve Entertainment  
Event Permit and Waive Fees:  
Art & Wine Summer Festival:  
August 20-21, 2005: Milpitas  
Chamber Of Commerce**

City Clerk Mary Lavelle presented the report. She explained that each year the Chamber of Commerce sponsors the well-attended Art & Wine Festival on the third weekend of August. Again this year, the Chamber requested a waiver of the business license fee, electrical permit fees, entertainment event fee, and the fee to rent the mobile performance stage. The Chamber also requested to hang banners in the City and to advertise on the electrical red-lighted reader board in front of City Hall.

All City departments had reviewed the application submitted and provided appropriate authorization for the Festival.

Event Chairman Tim Howard, of the Milpitas Chamber of Commerce, was present to answer Councilmembers' questions. He asked also for one change to the conditions required by the Planning Department: to hang signs for 21 days preceding the event, instead of only 14 days as stipulated.

Mayor Esteves opened the public hearing and asked for comments. No members of the public spoke on this item.

MOTION: to close the Public Hearing.

Motion/ Second: Councilmember Livengood / Vice Mayor Gomez

Motion carried unanimously by a vote of: AYES: 5  
NOES: 0

MOTION: Approve Entertainment Permit for the Chamber's annual Art & Wine Summer Festival with all fees waived, and approved request to post signs for 21 days prior to the event.

Motion/ Second: Councilmember Livengood / Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5  
NOES: 0

**2. Introduce Ordinance No.  
124.27 Amending Title XI  
Chapter 30 (Signs), Amending  
Title XI-10 and Amending  
Chapter V-500 of the  
Municipal Code to Enhance  
Code Enforcement Program**

Acting Planning and Neighborhood Services Director Tambri Heyden introduced this item, and began with a history of the existing municipal code regarding signs in the City, and the task force, which worked on the proposed new ordinance.

Staff recommended six months in between the adoption of the code amendments and its enforcement. Ms. Heyden also suggested quarterly task force meetings, in order to check any violations that occurred and to review those.

The planning front counter staff should be trained soon on the significant changes in the new version of the sign code. Originally, the ordinance was introduced back in March. It included some choices in enforcement: a reduction of fines, penalized those who take long time to comply with the explicit code, or to eliminate fines altogether.

The proposed ordinance discussed at the meeting included the sliding scale of fees concept, to give offenders a longer time to comply, providing staff time to visit site, take photos and recommend steps for compliance with new code, etc.

She displayed a chart indicating violations of the sign code between November 1, 2004

July 5, 2005





Motion failed on vote of:

AYES: 2 (Esteves, Polanski)  
NOES: 3

(4) MOTION: to introduce the Ordinance with modifications to eliminate fines, to allow appeal of non-compliance notification be heard before the City Council (not the City Manager) and to eliminate the existing sections of the municipal code regarding placement of political signs.

Motion/ Second: Councilmember Giordano / Vice Mayor Gomez

Motion carried on vote of:

AYES: 3  
NOES: 2 (Esteves, Polanski)

(5) MOTION: authorize outreach program and continue quarterly task force meetings for reviewing compliance with the new sign code

Councilmember Giordano was not convinced the task force needed to continue.

Mayor Esteves stated its purpose would be for the Council to receive feedback from the task force, and possibly consider modifications to ordinance.

Councilmember Livengood expressed that staff would need a good argument for why it must continue. He'd just as soon thank them now for their work, and move forward with the ordinance, as adopted.

Councilmember Polanski said she reviewed the sketches in her agenda packet, and believed that task force review on a quarterly basis would possibly make the new sign ordinance more user friendly.

Motion/Second: Mayor Esteves / Councilmember Polanski

Motion failed on a vote of:

AYES: 2 (Esteves, Polanski)  
NOES: 3

## **UNFINISHED BUSINESS**

### **3. Status Report On Farmers' Market**

Analyst Cindy Maxwell spoke to the Council about the current status of potential new sites for the temporary location of Farmer's Market. She referred to a revised chart distributed prior to the meeting, with nine highlighted sites. Mr. Dana Arbaugh, and Don Peoples provided some helpful feedback to City staff since the last Council meeting.

Ms. Maxwell reported that John Silveira of the Pacific Coast Farmer's Market Association had been working on site re-location, and he had spoken to current land owner at Town Center. Now, staff sought direction on whether to contact the property owner.

Mayor Esteves inquired of the status of the Serra Center as an alternative, and staff said the owner has not gotten back in touch with Farmer's Market management.

Vice Mayor Gomez inquired about Shappell Properties (owner of current location) and if they were favorable to hosting the market until the alternate site was found. Ms. Maxwell said perhaps a few more weeks may be possible, if the City requests it. Parking at any of the suggested alternatives was a topic of concern discussed.

Councilmember Livengood continued to support Serra Center, and did not support closing down any street for the Farmer's Market.

Mayor Esteves said he would be happy to write a letter to Shappell to work out issues of an extension at Town Center. In addition, Ms. Maxwell stated that Mr. Silveira felt an elected official should best talk to Cisco or Veritas management about locating Farmer's Market at their facilities.

Councilmember Polanski stated she was not in favor of Fiesta Plaza, as the parking situation there was not very good.

MOTION: Vice Mayor Gomez moved that (1) the City contact Shappell Industries for a time extension at the Town Center location, (2) Council authorize staff to continue to pursue other options with the Farmers' Market Association, and (3) if needed, authorize the Mayor to send any letter necessary on behalf of City Council regarding this issue.

Councilmember Livengood cautioned that he did not support certain sites, for example, Fiesta Plaza's not going to work, and thus did not support staff sending a letter on that one site nor any letter on closing a public street. He requested the Vice Mayor to amend his motion to include specific sites (from the list provided by staff).

Vice Mayor Gomez amended his motion to include these specific sites in pursuit of temporary sites for Milpitas Farmer's Market: Serra Center, McCarthy Ranch, WalMart, Great Mall, Veritas, Cisco, and VTA's Tasman Light Rail Park and Ride.

Ms. Maxwell commented that the city Planning Department was fully prepared for the Use Permit Application once a location was identified by the Farmer's Market Director.

Motion/ Second: Vice Mayor Gomez / Councilmember Giordano

Motion carried unanimously by a vote of: : AYES: 5  
NOES: 0

## **JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**

### **RA1. CALL TO ORDER**

Mayor/Agency Chairman Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:32 PM.

### **RA2. ROLL CALL**

PRESENT: Mayor/Chair Esteves, Vice Mayor/Vice Chair Gomez, and Agency/Councilmembers Giordano, Livengood and Polanski

### **RA3. MINUTES**

MOTION to approve the Redevelopment Agency minutes of June 21, 2005, including joint meeting with the City Council, as submitted.

Motion/ Second: Agency/Councilmember Polanski / Vice Chair/Vice Mayor Gomez

Motion carried unanimously by a vote of: AYES: 5  
NOES: 0

### **RA4. AGENDA**

MOTION to approve the Agenda as submitted.

Motion/Second: Agency/Councilmember Polanski / Agency/Councilmember Giordano

Motion carried unanimously by a vote of: AYES: 5  
NOES: 0

### **RA5. Update And Status Report On Milpitas Senior Housing Project**

Principal Housing Planner Felix Reliford presented this project, and introduced staff members from the Mid Peninsula Housing Coalition, the proposed developer of the senior housing facility.

Mr. Reliford spoke on four main issues with regard to the Project:

1. Proposed Site Development Plan
2. Extension of the Exclusive Negotiation Agreement
3. Proposed Costs of Senior Housing Project
4. Naming of the Senior Housing Project

The structure will be located at the DeVries/Smith home site, with four stories containing

up to 103 units total: 1 Studio, 88 one bedroom, 10 two bedroom and 1 manager unit. Also, three units are proposed on the second floor of DeVries House.

Plans call for 15,000 square feet outdoor common area, including a roof top patio. Rents projected will be designed at 25% to 40% of Area Median Income, for low or extremely low income residents (on HUD scale).

#### Status of Exclusive Negotiation Agreement

Mr. Reliford explained that it had been extended twice, and now it would be extended to August 31 in order to return next month, at the request of the developer. Ongoing negotiation with the County regarding the new healthcare facility adjacent to the site was occurring. Also, legal boundaries must be finally established and this was underway, in order to bring the Development Agreement to Council on August 16. January 2008 was the estimated date for completed construction of project.

Mayor Esteves asked Mr. Reliford about dates of construction and any possible conflict with the City's library project starting at the same time. Coordination would be necessary, staff acknowledged.

#### Summary of Projected Costs

Some unknown costs when started were now determined: \$1.6 million to relocate and renovate the DeVries house. He detailed the fact that construction costs in Santa Clara County were going up considerably, reviewing cost per square foot, and were likely to increase in future. He reminded Council that infrastructure and street improvement cost increases may be significant, too.

Costs were reviewed with a \$27.6 million dollars total project cost at this time. That number included \$1.6 million for the DeVries home and \$5.8 million for local street and utility improvements and permits/fees.

Funding was due for the project as follows: \$12 million from Mid Peninsula Housing Coalition, \$9.6 from the Milpitas Redevelopment Agency, \$5 million from KB Homes, and \$1 million from Santa Clara County. What happens if costs go up? asked Vice Mayor Gomez. Mr. Reliford replied that those probably will go up, and the City and developer would need to locate other funding sources and he'd return to the City Council.

Vice Mayor Gomez inquired about costs related to the DeVries house. How would that differ from tearing down the house and having Mid Peninsula build a new building there? Mr. Reliford was not prepared with an analysis of that idea, but he guessed that perhaps more senior units could be built.

Mayor Esteves asked if it would be any cheaper to tear down the DeVries house and build something brand new from scratch? Fran Waxman, President of Mid Peninsula Housing, responded that community space was planned at the home, and so there would not be an even trade of old for new. The rehabilitation of the house was about \$200/ft (vs. \$125 estimate for brand new), so the cost to do that work was more than to build brand new. It was up to the City Council to consider the historic value of the house, she stated.

Councilmember Livengood asked if the dollars for the project are static contributions? Mr. Reliford responded positively. Mr. Livengood expressed concern that any increased cost amounts would then have to come from the Agency, and preferred to set firmly the contribution from the RDA, with no more increase permitted. He did not want all cost increases on the back of the taxpayers. With a set dollar amount contributed for the project, negotiation would be needed or to scale back the project, if necessary.

Vice Mayor Gomez inquired the concept of scaling back (if costs increase too much) and wanted to hear from the City Attorney whether reducing the number of units in the project would be okay under the adopted Environmental Impact Report? The City Attorney said the City could reduce number of units in the main building, but there might be other implications for Mid Pensinsula Housing then.

#### Proposed Naming of Project

Mr. Reliford explained that the staff was requested to forward the four names suggested by Mid Peninsula to the Facility Naming Committee, then submit the selection to the City Council for review and decision. The four recommended names are: DeVries Court, DeVries Place, Orchard Court, and Orchard Place (reflecting the previous owner and/or previous uses of the property).

MOTION: to move the project forward, to set the Agency's commitment to the project at \$9.6 million total, to refer names as suggested to Community Facility Naming Committee which would return with its recommendation to the City Council.

Motion/Second: Agency/Councilmember Livengood / Vice Chair/Vice Mayor Gomez

Motion carried unanimously by a vote of:

AYES: 5

NOES: 0

#### **RA6. Receive Progress Report on Library, Midtown East and West parking garages**

Capital Improvements Program Manager Mark Rogge presented the progress reports. For the new library, the design development update was presented. On the Midtown Parking structures, the garage concept plan and preliminary cost estimates were to be given. He mentioned that the library project continued a little bit ahead of schedule while the parking garages were on schedule.

Mr. Rogge provided a lengthy list of design development phase actions, including stack layout, seating, and interior layout among others. On the exterior, they are working to refine elevation, sun studies (no glare problems), efficient structure and floor layout. Mr. Rogge displayed a diagram of the newest layout locations for self check-out, online book reservations, books on hold and other library tasks in order to accommodate the best flow of foot traffic.

A preview of the "solar analysis" was provided, with an explanation of its purpose to reduce sun as a detriment, reduce energy during daytime, not create excessive heat gain and reduce glare.

For the Midtown Garages, Mr. Rogge showed diagrams of the concept plans. East garage was planned as a four-story structure with 290 parking spaces, while the West garage was planned as four story with 300 spaces and some retail space. Conveniences of the garage design were displayed on screen. Costs to date were "right on target" at this time. Three entry/exits on main floor of East garage.

Councilmember Livengood pointed out the staircase on the outside of garage. Was there a way of internalizing that, he asked? Developer representative Jeff Adams answered that it could be considered.

Reviewed costs of \$12.5 million and \$13.5 million for the East and West garages respectively. Councilmember Livengood inquired about the figure of \$27,000 for each of 275 parking spaces. He stated that the City needed to continue to negotiate with the County on these spaces, particularly since costs were likely to go up, and that the County needs to chip in fairly for its portion of the parking spaces. He stated that Milpitas should tell the County it will cost more to build first 270 spaces.

Disposition and Development Agreement (DDA) was not finalized yet, and the City and County are under discussion about this document.

Regarding a request to consider adding a banquet facility on the top floor, it would be quite expensive, and there wouldn't be enough room on the first floor, according to Mr. Rogge. The subcommittee was not in favor of continued consideration of this added feature, due to increased costs.

The next presentation on this topic would be at the August 2 Council meeting – the

Refined Garage Concept & Cost Plan for Council's approval, upon recommendation by the Library Subcommittee.

MOTION: to receive and file the staff report.

Motion/Second: Agency/Councilmember Livengood / Vice Chair/Vice Mayor Gomez

Motion carried unanimously by a vote of:

AYES: 5

NOES: 0

**\* RA 7. Approve Purchase Order for Meyers Nave in the Amount Of \$150,000 for Public Works Litigation Expenses**

Approved Purchase Order for Meyers, Nave in the Amount of \$150,000 for Public Works Litigation Expenses for Fiscal Year 2004-05 and Approved Appropriation of \$150,000 from the Redevelopment Agency Undesignated Reserve to the City Attorney's Department Supplies and Services Budget for Fiscal Year 2004-05

**\* RA 8. Adopt Resolutions Approving The Annual Investment Policy**

Adopted Resolutions No. 7540 Approving the City's and No. RA 241 the Redevelopment Agency's Annual Investment Policy.

**RA9.  
ADJOURNMENT**

Mayor Esteves adjourned the Redevelopment Agency meeting at 9:32 PM. The City Council took a break at this time, and reconvened at 9:41 PM.

**REPORTS OF OFFICERS AND BOARDS**

**Economic Development Commission**

**6. Approve Draft Economic Strategic Plan of the Economic Development Commission**

Principal Administrative Analyst Cindy Maxwell introduced this subject. It took a year long project to come up with the document presented to the City Council at this meeting; the Economic Development Commission met often and worked hard, along with a hired consultant to come up with Strategic Plan. Also, she highlighted that previous comments from Commission's review of the Plan were incorporated in the report presented.

An implementation plan was under review by the Commission, and would come to the Council at a future date, along with a budget appropriation request.

Ms. Maxwell introduced Kathy Studwell of Applied Development Economics of Berkeley. She highlighted the work done as a team, with the City staff, the Economic Development Commissioners and her consultant firm.

Her presentation focused on four areas: Process / Key Findings / Suggested Goals/ and Strategies. Qualitative and quantitative methods were used, including much public outreach. Activity included a public meeting, survey of major employers, local business, interviews with major corporate executives.

Strengths noted were central location, easy transportation access, and diverse ethnic population. Significantly noted, most employees (82%) in this City live outside Milpitas. The study identified a vibrant downtown, with a need to improve City image. Milpitas had the highest median household income in the surrounding area. Customers were drawn in here from the region, but were losing upscale sales. The study noted that the Great Mall lags behind other shopping malls in retail sales per square foot.

Also, the primary economic drivers in Milpitas were identified as: 1) computer and communication hardware, 2) semiconductors, 3) electronic components, 4) software, and 5) biomedical industry. Shortages of engineers and affordable housing hinder some of these industries, however.

The study compared Milpitas to eight other cities on eleven benchmarks and found: most affordable housing v. wages; 60% of residents speak two or more languages (advantage);

2% of residents work at home; 1.5 jobs for each employed resident (imbalance) with 2.8 jobs for each housing unit. Noted also was that retail sales per capita in Milpitas was only \$12,890 versus e.g., Palo Alto was \$19,421.

Doug Spenson, President of ADE, discussed the six goals identified by the Commission in the report:

1. Improve Milpitas' image as a place to live, work and shop
2. Improve retail spending opportunities (Midtown, Great Mall)
3. Balance housing supply with housing demand by local workers
4. Retain and support the success of existing and new businesses
5. Improve the employability of local residents
6. Diversify Milpitas' economic base (e.g. more Class A office space)

Mayor Esteves introduced four members of the Commission who were present: Tomo Nguyen, Frank DeSmidt, Don Peoples, and Chairman Dhaval Brahmbhatt.

Councilmember Livengood highlighted that the consultant pointed out the concern of lack of high school students not going to University of California or California State Universities. Yet, he did not notice an objective in the stated goals that will address this problem. His belief was that there was a need for a particular goal with regard to higher education.

Councilmember Livengood also commented on per square foot, outlet malls never have the same amount of revenue as other malls, and in Milpitas, the Great Mall is overbuilt with vacancy all the time. City needs to work with new owners of Great Mall, with many stores generating a lot of revenue per square foot. He maintained excitement about the emphasis on retail in the stated goals in the presented plan. He was also pleased with the emphasis on retaining businesses in Milpitas, knowing it's easier to maintain than to attract new businesses. The report did quantify some specifics he appreciated, while the goals were weak and needed some work on these – fewer and more focused.

Economic Development Commission Speakers:

**Mr. Don Peoples**, spoke regarding the report and the EDC's unanimous support for the report presented. He explained the broad process of discussion that added to the depth of knowledge and points provided by the consultant. He asked Councilmembers to digest the report and what is in it for the future of Milpitas.

**Chairman Dhaval Brahmbhatt** expressed that it was his privilege to work over the past year on the Economic Development plan, and that he certainly hoped Councilmembers will look at it, evaluate its goals, and support the Commission.

Councilmember Giordano stated the plan was a good blueprint, she acknowledged the amount of work that went into it. She mentioned the point on the imbalance of retail mix, and recalled the difficulty of filling space at Town Center in years past. One comment on page 5, comments on Cluster Analysis: household income and adding shopping upscale, supply and demand cycle. She added more "missing link" relative to housing needs: that more upscale housing is needed. ADE consultants responded that on page 21, Goal 3, identified "upper end" housing should be added to marketplace. The single most important element is income, consultants stated.

Vice Mayor Gomez often felt he should ask of businesses "what can cities do for you?" and the responses were of two types: 1- get out of the way, or 2 - help retailers with infrastructure in place. He did not see an emphasis on infrastructure in the report. He held a concern for a survey to measure how effective this study would be.

The study expressed a way to measure goals v. benchmarks against eight other cities similar to Milpitas, said Kathy of ADE. This goes to the Vice Mayor's stated concerns. Doug Spenson of ADE added that implicit within the economic development work was the city's redevelopment plan that was already underway.

Vice Mayor Gomez wanted information on what were the priorities and what can City do now? Kathy Studwell said this would be next in the implementation plan

Councilmember Livengood commented further on housing. He had served on a local discussion panel with other City representatives regarding business in the East Bay. It was noted that the supply of high-end housing was critically important. For some of the larger companies, where the CEO lives does matter and that Milpitas should not ignore this. Kathy of ADE stated that communities compete on what is attractive to people, who are business leaders in current economy.

Mayor Esteves wanted to bring attention to the school issue, mentioned on page A-12, where dollars spent in this city vs. Palo Alto. Spending per pupil mattered quite a bit and he asked for attention to it. Doug Spenson of ADE reminded the Mayor that the MUSD Superintendent has a role to play in this topic and serves on the Commission.

Councilmember Polanski mentioned that when MUSD went for a parcel tax, the City could've been supportive and assisted. The previous Superintendent here was brought in regarding bond issue experience. In Milpitas, only about 20% of residents have kids in schools in the city, which impacts how much parent involvement in schools exists.

Chairman Brahmhatt had interviewed one founder of Genentech, and he felt Vice Mayor Gomez's "get out of the way" comment applied – with regard to that company locating in South San Francisco. To attract new technology, it's important that no major obstacles are in the business's way.

**MOTION:** Approve May 9, 2005 draft of Economic Strategic Plan and incorporate the comments relative to housing and schools that were brought up in Council's discussion and to complement staff and the Commission on the excellent draft plan.

Motion/ Second: Councilmember Polanski/ Councilmember Livengood

Public Speakers:

**Richard Ruth**, Quail Drive resident, pointed out one slide displayed: one which stated per capita income in Milpitas \$12,000 v. \$19,000 in Palo Alto. When stores choose where to locate, they surely look at income information. So, he asked what's the draw Milpitas will have to develop?

**Rob Means**, Yellowstone Drive resident, that one way to achieve the income goals would be drawing in people who make high income, but another way is driving out people who don't make enough money.

Motion carried unanimously by a vote of:

AYES: 5

NOES: 0

The Mayor thanked the Commission and commended its hard work over the past year. He looked forward to hearing from the Commission on the implementation plan in the fall.

## **NEW BUSINESS**

All items were adopted on the Consent Calendar.

## **ORDINANCES**

### **9. Public Arts Ordinance and Public Arts Committee**

The proposed Public Arts Ordinance was presented by Ms. Kathleen Yurchak of City Recreation staff.

She explained that the Ordinance No. 271 which defines public art work and mandated that a Public Arts Committee be formed to present public art work to the City Council. There was a call for development of a Public Art Master Plan, including implementation of a Public Art policy and the expenditure of a Public Art Fund. In addition, the Committee will consider Fundraising as part of Public Art efforts.

Committee make-up:

Vice Mayor Gomez inquired who will make up the Public Arts Committee? Kathleen responded that it will comprise: 3 Alliance for the Arts members, all current Public Arts Commission members, and one at-large member.

Mayor Esteves asked with regard to costs of the public art, does it include restoration or replacement? Maintenance and replacement of public art was included, staff said.

Councilmember Polanski asked for a review of changes recommended by City Attorney that were noted in a memo:

1. "Expenditures" included under 526.10, to delineate between eligible project expenditures vs. budget (1.5% of expenditures)
2. Deleted the requirement for an annual report to Council, regarding the use of funds (due to redundancy, as budget already adopted by City Council would express this, according to the Finance Director)

Vice Mayor Gomez reiterated that he would like to add goals to the fundraising responsibility of the Committee. City Attorney Mattas felt it would be rigid to put a numeric goal in an ordinance. City Attorney stated the Council may solicit input from the Arts Committee about reasonable goals and then Council could confirm this. Vice Mayor Gomez requested that goals be added to the semi-annual report to Council.

Mayor Esteves inquired about the budget for the Public Arts: that the 1.5% was intended of the actual expenditures by the City (not the planned budget), toward the Arts spending, and not a dollar amount. This was confirmed by the Finance Director.

City Attorney Mattas read the title of proposed Ordinance No. 271 aloud, which would add Chapter 20 to Title V of the Milpitas Municipal Code regarding Public Art Policy.

(1) MOTION: to waive the first reading of Ordinance No. 271

Motion/Second: Councilmember Livengood/ Councilmember Polanski

Approved unanimously by a vote of: AYES: 5  
NOES: 0

(2) MOTION: to introduce Ordinance No. 271, with amendment to include "goals" in subsection D regarding the semi-annual report to City Council on fundraising.

Motion/Second: Councilmember Livengood/ Councilmember Polanski

Approved unanimously by a vote of: AYES: 5  
NOES: 0

**10. Intro Ordinance regarding  
Open Government  
Commission**

NOT DISCUSSED – CONTINUED TO NEXT MEETING

**11. Moratorium on Medical  
Marijuana Dispensaries**

NOT DISCUSSED – CONTINUED TO NEXT MEETING

**12. Cable Television Franchise  
Ordinance No. 139.3**

This item was removed from the Consent Calendar for discussion by Councilmember Livengood.

Mr. Livengood favored the franchise renewal. In addition, once the Ordinance was adopted, he would like to return at the next City Council meeting with a Resolution for consideration, regarding Comcast's relationship with its workers and labor relations.



There would be no impact on adoption of this ordinance, City Attorney Mattas stated. He then read aloud the complete title of proposed Ordinance 139.3, Cable Television Franchise Renewal Agreement, Chapter 30 of Title XI of the municipal code

(1) MOTION: Waive second reading beyond title

Motion/Second : Councilmember Livengood / Vice Mayor Gomez

Motion carried unanimously by a vote of: AYES: 5  
NOES: 0

(2) MOTION: Adopt Ordinance No. 139.3; and return to City Council with a Resolution at next the next meeting relative to Comcast Inc. and its labor relations.

Motion/ Second: Councilmember Livengood / Councilmember Giordano

Motion carried unanimously by a vote of : AYES: 5  
NOES: 0

## **BIDS AND CONTRACTS**

### **16. Authorize City Manager to Negotiate a Contract with Dyett and Bhatia, Urban and Regional Planners, to Conduct Phase II of the Transit Area Plan for the ±400-acre Area Around the Light Rail and Future Montague / Capitol BART Stations**

Acting Planning Manager Tambri Heyden introduced this subject, stating there was an intent to achieve two things with the proposal: (1) complete the Precise Plan, and (2) to update the Midtown Specific Plan regarding higher housing densities.

Two alternative land use plans came out of plans, and Phase II was pursued with \$325,000. A great deal of interest was developed in the last four months in the transit area, timing was important, competition in the market has increased.

Staff requested to move forward on selecting a consultant. In May, Dyett and Bhatia submitted a scope of work, a 14-month schedule, budget, and all other required documents and other information, while three other interested firms withdrew from this process. Vice Mayor Gomez inquired why the firms withdrew, and the answers varied said Ms. Heyden.

Eight tasks of Phase II were needed so it was suggested to pull this area out of the Midtown Specific Plan area. New zoning districts were likely needed as would be General Plan Amendments. All Valley Transit Authority grant money and budgeted allocation would be spent on this project.

Costs totaled an additional \$197,635. It could be funded by the RDA or offset by developer contributions. Two choices were before Council: (1) approve contract at the original cost of only \$475,000, or (2) approve not-to-exceed original amount plus and additional suggested cost (\$672,635 total) for a contract with Dyett and Bhatia, which would need a budget amendment to authorize the additional amount.

Mayor Esteves had concern for whether or not BART comes to Milpitas. When would the present project be completed? Ms. Heyden responded in the next 14 months, September or October 2006. The Mayor had concerns about future changes that would arrive on the project area.

Councilmember Livengood stated he was not comfortable that there was only one bidder on this project. He had concerns about timing, as the Mayor brought forward, and how the costs inter-relate. He cared whether the City put in place a mechanism where City taxpayers get their money back. It is a huge consulting contract - more than half a million dollars - and he did not agree that the City should pay for it all.

City Attorney Mattas explained that the city development application process allows for cost recovery. Developer can pay part of costs. Cost recovery was already in place in the development process, per the City Attorney.

Mayor Esteves asked staff again about the timeline for this work. Ms. Heyden replied that there are developers ready to apply for their projects right away, expressly numbering three who are interested in the project area immediately.

Public Speakers:

**Mr. Don Peoples**, property owner, spoke about costs. He encouraged Council to move forward on this plan now. He referenced the value of increase in property values recently and all of that was good for business in Milpitas.

**Mr. Rob Means**, resident, spoke about land use planning, the Council had been talking about this subject area for a number of years, serious progress had been made, and he agreed with Mr. Livengood that costs should be paid for by companies that will profit. He believed this was one way to help businesses in the area.

MOTION: request City staff to prepare a memo about recouping costs, and also a written explanation regarding why only one consultant bid for this work.

Motion/second: Councilmember Livengood / Vice Mayor Gomez

Motion carried unanimously by a vote of:

AYES: 5

NOES: 0

**ADJOURNMENT**

Mayor Esteves adjourned the meeting at 11:32 PM.

Meeting minutes respectfully submitted by:

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Mary Lavelle, City Clerk